HEARING ON “WORKING WITH STATE REGULATORS TO INCREASE INSURANCE CHOICES FOR CONSUMERS”
STATEMENT BY JANICE OCHENKOWSKI
OF THE RISK AND INSURANCE MANAGEMENT SOCIETY
BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

RICHARD BAKER, CHAIR

March 31, 2004

Good morning Mr. Chairman and Members of the Subcommittee. My name is Janice Ochenkowski. I am the Vice-President of External Affairs for the Risk and Insurance Management Society (RIMS), the largest professional organization for the risk management community. I am also the Senior Vice-President, Risk Management for Jones Lang LaSalle, a multi-national real estate company based in Chicago. I appreciate the opportunity to appear before you today on the issue of insurance choices for consumers.

RIMS is in a unique position to participate in this hearing, as we represent the commercial consumers of insurance. RIMS member companies, which number over 4,000, support the advancement of efficient insurance purchasing abilities. RIMS membership spans the country and consists of entities of all different industries and sizes, including 84 percent of the Fortune 500 companies, as well as approximately 950 “small businesses,” those companies with less than 500 employees.

Nearly two years ago, RIMS spoke before this committee on the different insurance vehicles that are available to risk managers in their search to provide as much protection as possible for their company’s assets. We made a case for immediate and significant reform of the state insurance system that has only grown stronger over the last two years. RIMS also expressed its hope that one day an optional federal insurance charter would be made available for insurers operating in different states; an insurance vehicle that would free companies of the time and expense of securing individual contracts in each state of operation, with varied rates and forms. It is still RIMS belief that an optional federal charter will streamline insurance purchasing for consumers, and make the U.S. insurance system significantly more efficient.

However, the reality is that some view an optional federal insurance charter as too extreme a solution – an idea whose time has not yet come. Chairman Oxley and Subcommittee Chairman Baker's proposals to reform state regulation of insurance are reasonable and attainable, and will provide a much-needed opportunity for national uniformity and free market competition without excess regulation. RIMS fully supports the Oxley-Baker reform proposal, and urges Congress to enact these reforms as soon as possible.

In this increasingly competitive marketplace, commercial insurance consumers, like myself, need choices, flexibility, and speed. Operating throughout the country and the world as the primary insurance buyer for Jones Lang LaSalle, I am witness everyday to the numerous inefficiencies in the current state insurance system. Commercial consumers have struggled within a hobbled system long enough. These inefficiencies must be addressed and I applaud the members of this committee for presenting us with a meaningful blueprint for reform.

RIMS also recognizes the efforts of the NAIC in moving the U.S. insurance system fully into the 21st century. The NAIC has made real strides in personal lines insurance reform, but much more needs to be done for commercial consumers. The NAIC can only develop model laws; it cannot force state legislatures to adopt them. Even when states adopt NAIC models, inevitably changes are made which result in 50 different approaches to regulation of the industry. The Oxley-Baker proposal offers a chance to bring the best of state regulation and federal oversight together in a way that will preserve states' role, yet streamline and modernize the system for the benefit of consumers.

As this Congress and the NAIC move forward together to reform the U.S. insurance system, I would like to address some areas of concern for RIMS and the risk management community, including: market rates and forms; lead state concept for multi-state companies; and the Liability and Risk Retention Act.

Several years ago, there was momentum at the NAIC to adopt a model law and regulation with respect to commercial lines rate and form deregulation. The NAIC adopted one short version of commercial lines deregulation; however, a more comprehensive version has not been adopted. The National Conference of Insurance Legislators has also adopted a model commercial lines deregulation act. The problem with these model acts is that the states alter them, sometimes significantly, when adopted. For example, the premium threshold for commercial rates and forms to be deregulated ranges from $10,000 to $500,000, depending on a particular state's law. A few states have no requirements at all for filing rates and forms for commercial lines of insurance. RIMS supports the Oxley-Baker principle that a uniform standard be adopted that provides for free market competition of rates and forms for commercial lines of insurance.

Our experience is that in a free, open, and competitive market, risk managers will be able to negotiate the best rates and the best terms and conditions for coverages needed by our companies. RIMS believes that a national standard of freedom from form and rate regulation should encompass surplus lines policies as well. Currently, surplus lines policies' rates and forms are not regulated by the states; however, we think it would be prudent to include freedom from rate and form regulation for surplus lines policies in any federal statute governing commercial property and casualty insurance. Therefore, RIMS suggests that legislation should include a provision that no state, territory, or the District of Columbia shall regulate or control in any manner whatsoever the rates or the terms and conditions of commercial lines insurance policies. My home state of Illinois is a model for the commercial lines modernization that we are suggesting. In Illinois, the insurance market is strong and competitive, and insurance is widely available for consumers.

Some states have requirements that before an insurance buyer can obtain insurance from the surplus lines market, a diligent search of authorized insurers must be made to determine if the insurance is available through an authorized insurer. Commercial consumers should be allowed access to the surplus lines market without having to make this type of determination. At least eight states have enacted provisions in their commercial lines insurance deregulation laws permitting certain commercial buyers automatic access through a licensed surplus lines broker to the surplus lines market as well as to the admitted market. The NCOIL Property/Casualty Insurance Modernization Act permits the automatic export concept allowing certain commercial buyers to have automatic access through a licensed surplus lines broker to the surplus lines market, as well as to the admitted market. Thus, RIMS recommends that legislation permit commercial consumers to purchase insurance from any eligible unauthorized insurer without making a diligent search of authorized insurers as required by state law.

Most of RIMS' member companies are entities, like Jones Lang LaSalle, that do business throughout the United States and, in many cases, other parts of the world. In placing insurance, we as risk managers have to consider all of our exposures, no matter where they are located. When we purchase insurance, however, we are subject to individual state requirements with respect to our exposures in individual states. For example, there are many states that require that the licensed insurance producer who sells insurance to a company must be licensed in their individual state even though the risk in that state is an incidental exposure, such as a car on a fleet policy. Some states also require that special forms be added to policies, and in several cases, even require special color-coded paper. These requirements are burdensome, costly, and add no benefit to the commercial consumer; they are outdated and are simply not needed in today's commercial insurance marketplace. RIMS supports the Oxley-Baker concept of a leading state regulator for commercial policies covering multi-state exposures. Under this concept, the state of the company's principal place of business would govern the insurance transaction, including the terms and conditions of the policy and the requirements that the producer be licensed.

This concept was discussed by the NAIC Producer Licensing Working Group in the development of the Producer Licensing Model Act (PLMA). Section 4(B)(6) of the PLMA exempts from producer licensing requirements "a person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risk located in that state." This concept could be adopted as a uniform national standard, so that insurance producers would not have to be licensed in every state where a national company has a risk exposure. Similarly, a uniform provision which states that the law of the state in which the insured company has its principal place of business and insures risk in that state is the state that has jurisdiction over the commercial property and casualty insurance contract.

The federal Liability and Risk Retention Act (Risk Retention Act) is an excellent example of how the lead state concept can work. RIMS strongly supports the Risk Retention Act and, in fact, supports expanding its provisions to include the ability to insure property. Risk managers have found that having a variety of ways to protect their companies from risks is beneficial. The Risk Retention Act, which was first adopted in

1980 and then amended in 1986, has worked well in its 20-plus years of existence. Compared to the regular admitted insurance market, risk retention groups have performed well and have provided opportunities for companies to obtain coverages in areas where we have been unable to obtain coverages or where such coverages have been unaffordable.

Recently, there has been some criticism of the Risk Retention Act from regulators. Mostly, I believe they are unhappy because every state doesn't extensively regulate risk retention groups the way they regulate admitted companies. I suggest that individual state regulation of each admitted company is why there has been pressure for one-stop federal regulation. The Risk Retention Act provides significant safeguards for the chartering state and states in which risk retention groups operate.

Under federal law, risk retention groups must be chartered in a state. The chartering state regulates the formation and operation of the risk retention group. It must approve the plan of operation and feasibility study, which includes coverages, coverage limits, rates, and rating classification for each line of insurance the risk retention group plans to offer.

Any state, however, may require a risk retention group to:

1. Comply with unfair claims settlement practices laws;
2. Pay all applicable premium taxes;

3. Participate in any mechanism established or authorized under state law for equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanisms;
4. Register with and designate the state insurance commissioner as its agent for service of process;
5. Submit to a financial examination if (a) the commissioner of the domiciliary state has not begun one or (b) has refused to initiate an examination of the group; and
6. Comply with state false and deceptive practices laws.

In addition, a risk retention group must provide a copy of its plan of operation or feasibility study to any state in which the risk retention group does business. It must also provide a certified copy of the group's annual financial statement to the chartering state and to every state in which it is doing business.

RIMS believes that this balance of regulation between the chartering state and other states in which a risk retention group does business gives the chartering state control over the operation of the risk retention group and provides states in which the risk retention group is doing business sufficient information about the group to insure its solvency if it has any questions about the regulatory oversight of the chartering state. To protect consumers, any state insurance commissioner may petition any federal district court for an injunction if the commissioner believes the risk retention group is operating in a hazardous financial condition. The injunction granted by the district court has nationwide effect.

Finally, I would like to address the issue of a federal enforcement mechanism to ensure state compliance with the proposed federal standards. The Oxley-Baker proposal calls for a federal coordinator, with little or no real influence, to work with the proposed federal-state advisory council. RIMS supports the concept of a federal coordinator, but believes that for national uniformity to work, this individual should have some authority to determine that state laws comply with federal uniform standards. Obviously, this will be a sensitive area, yet one that must be addressed if these reforms are to be given a chance at producing national uniformity and free market competition without excess regulation.

RIMS looks forward to working with your committee and the Congress on these critical issues. Thank you for the opportunity to speak today. I appreciate your time, interest, and leadership, and I welcome any questions by the Subcommittee.